

Ordinance No. 9-11 ORDINANCE: To amend Chapter 17 of the Rockville City Code, Entitled "Purchasing" to increase the monetary threshold for procurements and contracts; increase the approval authority for the Purchasing Agent; and generally revising and amending the provisions of Chapter 17 of the Rockville City Code.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF ROCKVILLE, that Chapter 17 of the Rockville City Code, entitled "Purchasing" is hereby amended to read as follows:

SECTION 1. That Article 1 entitled "General Provisions," be amended as follows:

## **ARTICLE I. GENERAL PROVISIONS**

### **DIVISION 1. PURPOSES, CONSTRUCTION AND APPLICATION**

\* \* \*

### **DIVISION 2. DEFINITIONS**

#### **Sec. 17-16. Definitions.**

The terms defined in this section shall have the meanings set forth below whenever they appear in this chapter unless the context in which they are used clearly requires a different meaning or a different definition is prescribed for a particular provision.

\* \* \*

Environmentally preferable purchasing means the procurement or acquisition of goods and services that have a lesser or reduced effect on human health and the environment when compared with competing goods or services that serve the same purpose, based on the raw materials, manufacturing, packaging, distribution, use, reuse, operation, maintenance, and disposal of the goods or services.

*Formal contract* means a written contract for procurements exceeding [fifteen thousand dollars \$15,000.00] thirty thousand dollars (\$30,000.00) and signed by the City Manager and the contractor.

\* \* \*

*Informal contract* means a contract for procurement not exceeding [fifteen thousand dollars (\$15,000.00)] thirty thousand dollars (\$30,000.00).

*Kickbacks* means any money, fee, commission, credit, gift, or compensation of any kind which is provided directly or indirectly to a prime contractor, a prime contractor employee, a subcontractor, a subcontractor employee, a public employee, or other person for the purpose of obtaining or rewarding favorable treatment in the award of a prime contract or a subcontract in connection with a contract awarded by the City.

*Life-Cycle Cost* means the comprehensive accounting of the total cost of a product including procurement, initial cost, energy and operational cost, maintenance, longevity of service and disposal.

\* \* \*

*Public notice* means notice of a procurement solicitation given in a manner reasonably calculated to provide notice to persons interested in the solicitation. At a minimum, such notice shall include posting notice of all pending procurements [in the Purchasing Office] on a City website maintained for that purpose. Such notice may, but need not necessarily, include publication in a newspaper of general circulation, electronic [or paper] mailing lists, and web sites maintained for that purpose.

\* \* \*

*Purchasing agent* means the person designated as purchasing agent pursuant to section 17-21 of this chapter. The term shall also include any person designated pursuant to section 17-2[5]4 of this chapter by the purchasing agent to perform one or more functions of the purchasing agent.

\* \* \*

[*Solicitation register* means a list of potential contractors, and includes the term "bidders list" and similar terms.]

### **DIVISION 3. PURCHASING AGENT**

#### **Sec. 17-21. Establishment and appointment.**

\* \* \*

**Sec. 17-22. Authority and duties of the purchasing agent.**

Except as otherwise provided in this chapter, the purchasing agent shall have the authority and responsibility to:

- (1) \* \* \*
- (2) \* \* \*
- (3) \* \* \*
- (4) \* \* \*
- (5) \* \* \*
- (6) \* \* \*
- (7) \* \* \*
- (8) \* \* \*
- (9) \* \* \*
- (10) Maintain [all] contract files associated with procurements;
- (11) \* \* \*
- (12) \* \* \*
- (13) \* \* \*
- (14) Ensure compliance with this chapter by reviewing and monitoring procurements conducted by any designee, department, or employee delegated authority under section 17-2[5]4;
- (15) \* \* \*
- (16) \* \* \*

**[Sec. 17-23. Solicitation registers.**

The purchasing agent shall maintain one or more current solicitation registers (or "bidders list") of potential sources of supply for various categories of goods, insurance, services, and construction. Solicitation registers shall include, but need not be limited to, all prequalified persons.]

**Sec. 17-2[4]3. City procurement records.**

All determinations and other written records pertaining to any formal solicitation, award, or performance of a contract shall be maintained for the City in a contract file. All records shall be maintained for such time as required by State law or regulation but in no event less than three (3) years or according to retention schedules approved by the State.

**Sec. 17-2[5]4. Delegation of authority by purchasing agent.**

\* \* \*

SECTION 2. That Article II, entitled "Contract Formation" be amended as follows:

**ARTICLE II. CONTRACT FORMATION**

**Sec. 17-36. Types of contracts.**

\* \* \*

**Sec. 17-37. Written contracts required.**

(a) All contracts involving more than [two thousand dollars (\$2,000.00)] three thousand dollars (\$3,000.00) shall be in writing.

(b) \* \* \*

**Sec. 17-38. Formal contracts.**

Except for the purchase of goods and equipment, formal written contracts signed by the City Manager and the contractor shall be required for procurements exceeding[fifteen thousand dollars (\$15,000.00)] thirty thousand dollars (\$30,000.00), including requirements contracts estimated to exceed [fifteen thousand dollars (\$15,000.00)] thirty thousand dollars (\$30,000.00) in any given fiscal year.

**Sec. 17-39. Awarding authority.**

(a) \* \* \*

(b) Except for those contracts awarded by the Council and when emergency procurements are necessary, all formal two-party contracts shall be awarded by the City Manager.

(c) \* \* \*

\* \* \*

.....

SECTION 3. That Article III entitled "Source Selection" be amended as follows:

## ARTICLE III. SOURCE SELECTION

## DIVISION 1. GENERAL

\* \* \*

## DIVISION 2. COMPETITIVE PROCUREMENT

**Sec. 17-61. Formal solicitation--Competitive sealed bidding.**(a) *Conditions for use.* \* \* \*(b) *Invitation for bids.* \* \* \*(c) *Public notice.* \* \* \*

[(d) *Solicitation register.* The purchasing agent may solicit sealed bids from responsible prospective bidders on a solicitation register for supplies, services, insurance, or construction that are similar in character and ordinarily handled by the prospective bidders to which the invitations are sent. ]

([e] d) *Bid opening.* \* \* \*([f] e) *Late bids.* \* \* \*([g] f) *Bid acceptance and evaluation.* \* \* \*([h] g) *Waiver of minor informality or immaterial bid defect.* \* \* \*([i] h) *Correction or withdrawal of bids; cancellation of awards.*

(1) \* \* \*

(2) \* \* \*

a. \* \* \*

b. \* \* \*

(3) Where an error is discovered in the successful bid after the award of the contract and the conditions of subsection ([i] h)(2)a. or ([i] h)(2)b. of this section are satisfied, the bid may be corrected or withdrawn, respectively, and the contract amended or rescinded as appropriate, provided that no bid correction or contract amendment shall be permitted that would cause the contract price to exceed the next lowest bid.

(4) \* \* \*

(5) \* \* \*

(6) \* \* \*

(7) \* \* \*

(8) \* \* \*

([j] i) *Contract award.* \* \* \*

([k] j) *Tie bids.* \* \* \*

([l] k) *Multi-step sealed bidding.* \* \* \*

([m] l) *Single bid.* \* \* \*

(m) Contract award based on "best value". Notwithstanding Section 17-61(i), a contract may be awarded on best value analysis provided that the criteria for analysis was included in the invitation for bids. The contract shall be awarded to the responsive, responsible bidder whose bid is determined to be the best value to the City and that conforms in all material respects to requirements and criteria set forth in the invitation for bids.

**Sec. 17-62. Formal solicitation--Competitive sealed proposals.**

(a) *Conditions for use.* \* \* \*

(b) *Written justification.* \* \* \*

(1) \* \* \*

(2) \* \* \*

(3) \* \* \*

(c) *Request for Proposal (RFP); evaluating factors.* \* \* \*

(d) *Public notice.* \* \* \*

(e) *Receipt and opening of proposals.* \* \* \*

(f) *Late proposals.* \* \* \*

(g) *Discussion with Responsible Offerors and Revisions to Proposals.* \* \* \*

(h) *Ranking of proposals; negotiation; award.* \* \* \*

(i) Multiple awards. Multiple awards may be made under a single RFP if the RFP provides for multiple awards.

**Sec. 17-63. Informal solicitation.**

(a) Any purchase not exceeding [fifteen thousand dollars (\$15,000.00)] thirty thousand dollars (\$30,000.00) may be made in accordance with informal procurement procedures established by the purchasing agent that provide for informal solicitation of bids, quotations, proposals or offers.

(b) \* \* \*

**Sec. 17-64. Request for expressions of interest.**

(a) Conditions of use. A request for expressions of interest may be used to:

- (1) obtain essential procurement information needed to prepare a subsequent solicitation;
- (2) develop a ready source of potential offerors who can respond to a subsequent solicitation; or
- (3) resolve technological or programmatic questions relative to how the City requirements can best be supplied.

(b) Public notice. As determined by the purchasing agent, public notice of the request for expressions of interest shall be given in the same manner provided in section 17-61(c).

(c) Evaluation. A request for expressions of interest must contain evaluation factors and an explanation of how the list of offerors who will be eligible to receive a subsequent solicitation will be determined.

(d) Selection Committee. A selection committee must review and evaluate the proposals and recommend a list of offerors who will be eligible to receive a subsequent solicitation.

(e) Subsequent solicitation. A request for expressions of interest does not directly lead to the award of a contract. Only those offerors determined to be eligible to receive a subsequent solicitation may participate in any subsequent solicitation. A subsequent solicitation may be accomplished through competitive sealed bidding, competitive sealed proposals, or an informal solicitation. Proposals received under a request for expressions of interest may form a basis for justifying a non-competitive contract award.

**Sec. 17-65. Unsolicited Proposals.**

(a) Processing of Unsolicited Proposals. If the City receives a proposal, other than one submitted in response to a solicitation, the purchasing agent shall forward the proposal to the using department.

(b) Conditions for Use. To be considered for evaluation, an unsolicited proposal:

- (1) Shall be in writing;
- (2) Shall be sufficiently detailed to allow a judgment to be made concerning the potential utility of the proposal to the City;
- (3) Shall contain a novel or innovative concept, application, approach, or method or which demonstrates a novel capability of the offeror of the proposal;

(c) *Evaluation.* The purchasing agent shall make a determination as to whether the proposal meets the requirements of section 17-65(b). The purchasing agent shall make a determination within 30 days after receiving the unsolicited proposal. If the purchasing agent fails to make a determination within 30 days as required, the unsolicited proposal shall be considered disapproved.

If the purchasing agent determines that the proposal does not meet the requirements of this section, a contract award shall not be made based on the unsolicited proposal.

(d) *Discussion with Responsible Offeror.* The purchasing agent and the using department may conduct discussions with an offeror who submits a proposal for the purpose of clarification and to assure full understanding. An offeror shall be afforded an opportunity to revise their proposal prior to award.

(e) *Public notice before award.* Not less than 30 days before the execution and award of a contract based on an unsolicited proposal, the purchasing agent shall publish a notice of intent to award the contract on the City's website. If, during the 30-day period before contract award, a person files a written petition with the City for reconsideration of an approval determination, the awarding authority shall reconsider and make written findings affirming or reversing the approval.

(f) *Contract Award.* Subject to the provisions set forth herein, award of an unsolicited proposal shall be made in accordance with section 17-39.

(g) *Confidentiality.* The proposal, except for information identified by the offeror as proprietary, shall be open for public inspection after contract award.

**Sec. 17-6[4]6. Right to cancel solicitations; right to reject bids, proposals and offers.**

\* \* \*

**Sec. 17-6[5]7. Responsibility of bidders and offerors.**

\* \* \*



**DIVISION 3. COOPERATIVE PROCUREMENT**

\* \* \*

**DIVISION 4. NON-COMPETITIVE PROCUREMENT METHODS****Sec. 17-81. [Petty expenditures] Small Procurements**

Expenditures of not more than [two thousand dollars (\$2,000.00)] three thousand dollars (\$3,000.00) may be made by the using department without the prior approval of the purchasing agent in accordance with procedures governing [petty] small procurements established by the purchasing agent.

**Sec. 17-82. Sole source procurement.**

(a) \* \* \*

(b) \* \* \*

(c) The purchasing agent shall submit to the City Manager an annual report of all sole source procurements in excess of [fifteen thousand dollars (\$15,000.00)] thirty thousand dollars (\$30,000.00).

**Sec. 17-83. Phased projects or services.**

\* \* \*

**Sec. 17-84. Emergency procurements.**

(a) \* \* \*

(b) \* \* \*

(c) \* \* \*

(d) To the extent feasible under the circumstances, the purchasing agent shall obtain the approval of the City Manager for emergency procurement in excess of [fifteen thousand dollars (\$15,000.00)] [[one hundred thousand dollars (\$100,000.00)]] thirty thousand dollars (\$30,000).

(e) The purchasing agent shall submit to the City Manager an annual report listing of all emergency purchases in excess of [fifteen thousand dollars (\$15,000.00)] thirty thousand dollars (\$30,000.00).

(f) The Council shall [promptly] be notified of emergency procurements exceeding [forty thousand dollars (\$40,000.00)] [[five hundred thousand dollars \$500,000.00]] one hundred thousand dollars (\$100,000) as soon as practicable.

**Sec. 17-85. Related construction projects.**

\* \* \*

**Sec. 17-86. Contract extensions.**

\* \* \*

**Sec. 17-87. [Miscellaneous procurement] Exemptions.**

The following are exempt from competitive procurement:

(1) \* \* \*

(2) \* \* \*

(3) Purchases for water, sewer, electric, telephone, postage or other utility services and motor vehicle license plates.

(4) Sale, rental, or purchases of land and improvements on the land, and rights-of-way.

(5) \* \* \*

(6) \* \* \*

(7) \* \* \*

(8) \* \* \*

(9) \* \* \*

(10) \* \* \*

(11) \* \* \*

(12) \* \* \*

(13) \* \* \*

(14) \* \* \*

(15) \* \* \*

(16) \* \* \*

(17) \* \* \*

(18) On-going proprietary software maintenance or support

Although procurements referred to in section 17-87 are exempt from competition, the provisions of sections 17-37, 17-38 and 17-39 apply.

**Sec. 17-88. Special procurements.**

(a) \* \* \*

(b) \* \* \*

[(c) The purchasing agent shall submit to the City Manager an annual report listing all procurements made under this section.]

**Sec. 17-89. Environmentally preferable purchasing.**

The purchasing agent will develop an environmentally preferable purchasing policy which shall provide preference, to the greatest extent practicable, to products and services that will enhance and protect the environment, protect the welfare of workers, residents, and the larger global community, and represent the best overall value to the City.

SECTION 4. That Article IV entitled "Disposition of Goods" be amended as follows:

**ARTICLE IV. DISPOSITION OF GOODS**

**Sec. 17-101. Generally.**

\* \* \*

**Sec. 17-102. Methods of sale.**

(a) All surplus goods [valued in excess of fifteen thousand dollars (\$15,000.00)] shall be disposed of using any of the following methods which will yield the greatest return under the circumstances:

(1) Transfer to another City department, whenever feasible, before other methods of disposal are considered.

[[1] 2) Sale to the highest responsible bidder by the competitive bid or proposal procedures prescribed in Article III, Division 2 of this chapter, except that the goal shall be to obtain the highest price from prospective purchasers.

([2] 3) Competitive auction sale, including internet auction sale, after reasonable public notice.

([3] 4) Trade-in or exchange of goods which are of current need.

[(b) In addition to the foregoing methods, the following disposition methods may be used for surplus property whose current estimated value is fifteen thousand dollars (\$15,000.00) or less:]

[(1) Disposition based on competitive price quotations and made to a responsible purchaser offering the highest price.]

([2] 5) Surplus goods may be first offered to City employees at a set price determined by the City Manager to be reasonably equivalent to the best price the City could expect to obtain on the open market.

[(c] b) Notwithstanding any other provision of this section, the City Manager may authorize making a gift, loan, or sale below fair market value of surplus goods to other public entities or to non-profit entities located within the corporate boundaries of the City upon a written determination that such loan, gift or sale would be in the best interest of the City.

#### **Sec. 17-103. Worthless items.**

In the event the purchasing agent determines that the goods offered for disposal have no real or scrap value, they may be recycled or disposed of as refuse in a manner that complies with all applicable environmental laws, regulations and permits.

\* \* \*

SECTION 5. That Article VI entitled "Ethics in Contracting" be amended as follows:

#### **ARTICLE VI. ETHICS IN CONTRACTING**

#### **Sec. 17-151. Multiple bidding.**

(a) Unless multiple or alternate bids are requested in the solicitation, [M]more than one bid or proposal received in response to a single solicitation from a business, including any affiliate, under the same or different names will be rejected.

(b) \* \* \*

(c) \* \* \*

(d) \* \* \*

(e) \* \* \*

(f) \* \* \*

**Sec. 17-152. Collusive bidding.**

\* \* \*

**Sec. 17-153. Illegal gifts and kickbacks.**

(a) \* \* \*

(b) \* \* \*

[(c) Kickbacks.

(1) In this chapter, a kickback means any money, fee, commission, credit, gift, or compensation of any kind which is provided directly or indirectly to a prime contractor, a prime contractor employee, a subcontractor, a subcontractor employee, a public employee, or other person for the purpose of obtaining or rewarding favorable treatment in the award of a prime contract or a subcontract in connection with a contract awarded by the City.]

[(2)] (c) A person must not:

- a. Provide, attempt to provide, or offer to provide a kickback;
- b. Solicit, accept, or attempt to accept a kickback;
- c. Claim that the unlawfully induced contract or subcontract fulfills any legal, regulatory, or contractual requirement.

(d) \* \* \*

**[Sec. 17-154. Authority to debar contractors.**

(a) After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the purchasing agent, after consulting with the City Attorney is authorized to debar a person for cause from consideration for award of contracts. The debarment shall be for a period of not more than two (2) years.

(b) The causes for debarment include:

- (1) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
- (2) Conviction under State or Federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or

business honesty which currently, seriously, and directly affects responsibility as a City contractor;

(3) Conviction under State or Federal antitrust statutes arising out of the submission of bids or proposals;

(4) Violation of contract provisions, as set forth below, of a character which is regarded to be so serious as to justify debarment action:

a. Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract;

b. A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one (1) or more contracts, provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment.

(5) Any other cause determined to be so serious and compelling as to affect responsibility as a City contractor, including debarment by another governmental entity for any cause listed in this chapter;

(6) Violation of Chapter 16 (Public Ethics) of this Code or any provision of this chapter.

(c) Decision to debar. The purchasing agent shall issue a written decision to debar, which shall be mailed or otherwise furnished to the debarred or suspended person. A decision to debar may be appealed to the City Manager in accordance with section 17-172.]

**Sec. 17-15[5]4. Split purchasing/sale prohibited.**

\* \* \*

**Sec. 17-15[6]5 City official/employee conflict of interest.**

\* \* \*

**Sec. 17-15[7]6. Disclosure of Subsequent Employment**

\* \* \*

**Sec. 17-15[8]7. Remedies; penalties.**

In addition to any other penalties provided by State or City law:

(1) \* \* \*

(2) Any person responsible for the making of a contract in willful violation of the provisions of sections 17-152, 17-153, or 17-15[6]5 shall be guilty of a misdemeanor.

SECTION 6. That Article VII entitled "Appeals and Remedies" be amended as follows:

**ARTICLE VII. [APPEALS AND REMEDIES] PROTESTS AND DEBARMENT**

**Sec. 17-171. Protests.**

\* \* \*

**[Sec. 17-172. Appeal of decision to debar.**

A decision of the purchasing agent to debar a contractor may be appealed to the City Manager within five (5) business days after the date of the decision. The appeal shall be made in writing and contain in detail all information and documentation in support of the appeal. The City Manager shall issue a written decision as soon as practicable, which decision shall be final and binding.]

**Sec. 17-17[3]2. Appeal of determination of nonresponsibility.**

\* \* \*

**Sec. 17-17[4]3. Contract disputes.**

\* \* \*

**Sec. 17-17[5]4. Appeals from City Manager's decisions.**

\* \* \*

**Sec. 17-[154] 175. Authority to debar or suspend contractors.**

(a) After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the purchasing agent, after consulting with the City Attorney is authorized to debar a person for cause from consideration for award of contracts. The debarment shall be for a period of not more than two (2) years.

(b) The causes for debarment include:

(1) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;

(2) Conviction under State or Federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a City contractor;

(3) Conviction under State or Federal antitrust statutes arising out of the submission of bids or proposals;

(4) Violation of contract provisions, as set forth below, of a character which is regarded to be so serious as to justify debarment action:

a. Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract;

b. A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one (1) or more contracts, provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment.

(5) Any other cause determined to be so serious and compelling as to affect responsibility as a City contractor, including debarment by another governmental entity for any cause listed in this chapter;

(6) Violation of Chapter 16 (Public Ethics) of this Code or any provision of this chapter.

(c) Decision to debar. The purchasing agent shall issue a written decision to debar, which shall be mailed or otherwise furnished to the debarred or suspended person. A decision to debar may be appealed to the City Manager in accordance with section 17-172.

**Sec. 17-176. Appeal of decision to debar.**

A decision of the purchasing agent to debar a contractor may be appealed to the City Manager within five (5) business days after the date of the decision. The appeal shall be made in writing and contain in detail all information and documentation in support of the appeal. The City Manager shall issue a written decision as soon as practicable, which decision shall be final and binding.

\* \* \*



NOTE: [Brackets] indicate material deleted  
Underlining indicates material added  
[[Double brackets]] indicate material deleted after introduction  
Double underlining indicates material added after introduction  
Asterisks \* \* \* indicate material unchanged by this ordinance

\* \* \* \* \*

I hereby certify that the foregoing is a true and correct copy of an Ordinance adopted by the Mayor and Council at its meeting of June 13, 2011.

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Glenda P. Evans, City Clerk